

Appl. No. 09/823,045

REMARKS/ARGUMENTS

Status of Claims

Claims 1-29 were originally filed in the application to which the present case claims priority. As outlined above, Claim 24 has been amended. In particular, the newly added language in Claim 24 is supported in the specification at page 7, lines 8-12. Claims 1-17 and 21-29 stand rejected for a variety of reasons. Claims 18-20 and 24 are allowed. Claims 1-29 remain in this application.

Rejections – 35 U.S.C. § 112

Claim 24 is rejected under 35 U.S.C. 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim has been amended above to address this objection and make the claim consistent with the disclosure on p. 7, ll. 8-12. Withdrawal is respectfully requested.

Rejections – 35 U.S.C. § 102(b)

Claims 1-3, 5, 6, 14-17, 21-23 and 25-29 stand rejected under 35 U.S.C. 102(b) as being anticipated by Olsen, U.S. 5,688,257 ("Olsen"). Applicant respectfully traverses this rejection.

The present invention relates to an absorbent device for insertion into a vaginal cavity. The absorbent device has an overwrap and an absorbent structure having absorbent material that may be aggregate in nature. The overwrap has an upper portion and a lower portion. The upper portion includes a liquid permeable open mesh web or apertured film material. The lower portion includes a liquid impermeable material, such as a thin film or a coated fabric. The upper and lower portions are joined to form a container for the absorbent material. The lower portion is capable of contacting vaginal walls during use.

The Office Action states that Olsen teaches preventing leakage by heat sealing at least a portion of the end part of the thermoplastic material to form a fluid impervious film covering the end of the tampon of Olsen. Applicant respectfully submits Olsen does not teach the use of an impermeable barrier that will make contact with the vaginal walls during use to form a barrier to leakage. The impervious lower portion of the present invention "is an impermeable barrier that prevents fluid from passing from the vaginal canal. Additionally, lower portion 20 is flexible and resilient enough to form a seal with the vaginal cavity when the device is filled with fluid." (page 3, lines 24-28).

Appl. No. 09/823,045

With regard to the recited limitation of "said over wrap comprised of dissimilar materials", it is the position of the Examiner that Olsen, et al., meets this limitation by heat-sealing at least a portion of the end part to form a fluid pervious film. Applicant respectfully submits that heat sealing pervious upper portion material to form a tampon with impervious film at the end of the tampon of Olsen (Col. 2, ll 41-56), is not similar to the present invention described above. Olsen does not teach a tampon with overwrap of dissimilar materials that are joined to form a container for the absorbent material (Claim 1).

The Office Action indicates the patent issued to Olsen teaches a tampon comprising an absorbent body having a thermoplastic fluid permeable casing and a withdrawal string. With respect to claim 3, the office action suggests Olsen teaches that suitable absorbent materials include cellulose fibers such as rayon or cotton and may further include a small amount of thermoplastic binding fibers to provide stability. Applicant respectfully submits Olsen teaches use of thermoplastic binding fibers to "stabilize the finished tampon" (col. 2, l. 31). The thermoplastic binding fibers of Olsen form bonds that are reversible only with application of sufficient heat to break the bond. In contrast, the present invention refers to the use of binding agents or bondable fibers in which the bond is "releasable in a moist or aqueous liquid environment" (page 11, ll. 4-16). Releasable bonds are not taught by Olsen.

Based on the discussion above, reconsideration and withdrawal of the rejection of Claims 1-3, 5, 6, 14-17, 21-23 and 25-29 are respectfully requested.

Rejections – 35 U.S.C. § 103

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Olsen in view of Koyo Co. Ltd., Derwent Japanese Abstract JP 07-070896A ("Koyo Co. Ltd."). Applicant respectfully traverses this rejection.

The present invention is generally described above. Claim 4 relates to a further refinement of the invention. Claim 4 relates to a limitation on the absorbent device where the binding agent is water soluble.

The Japanese abstract to Koyo Co. Ltd. purports to disclose incorporating a water dispersible binding agent into short biodegradable, water unswelling thermoplastic fibers. The dispersible binding agent promotes the dispersion of the nonwoven; thus, when the non-woven is flushed the fabric does not block plumbing.

The Office action allows that Olsen fails to teach using a water soluble binding agent, but it indicates that Koyo Co. Ltd. supplies this teaching. The Office Action suggests that it would have been

Appl. No. 09/823,045

obvious to substitute the water soluble binding agent taught by Koyo Co. Ltd. for the thermoplastic binding fibers of Olsen, in the catemerial device taught by Olsen in order to allow it to be flushed away.

Applicant respectfully submits that the suggested combination fails to teach or suggest the presently claimed invention. The failure of Olsen to teach the invention of Claim 1, from which Claim 4 depends, is detailed above. Applicant maintains the suggestion of Koyo Co. Ltd. to incorporate a water dispersible binding agent into short biodegradable thermoplastic fibers in order to promote dispersion of the nonwoven (Abstract) is very different from the use of water soluble binding agents with the absorbent fibers in order to "allow the absorbent material to remain compressed." (page 11, ll 6,7). Applicant respectfully requests the present rejection be reconsidered and withdrawn.

Claims 7-9 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Olsen in view of Martens, et al., WO 97/23248 ("Martens"). Applicant respectfully traverses this rejection.

The present invention is generally described above. Claims 7-9 relate to further refinements of the invention. Claims 7-9 relate to the use of cellulosic fibers in the absorbent material.

Martens discloses a tampon having an absorbent body formed of a mixture of standard cellulosic fibers and multi-limbed cellulosic fibers.

The Office Action allows that Olsen lacks an explicit teaching to the specific cross-sectional shape of fiber used; however, it indicates that Martens supplies this teaching and that it would have been obvious to use the fibers of Martens in the device of Olsen in order to increase its absorption capacity. Applicant respectfully submits that the suggested combination fails to teach or suggest the presently claimed invention. The failure of Olsen to teach the invention of Claim 1, from which Claims 7-9 depend, is described in detail, above. Applicant does not believe that Martens adds anything to the teaching of Olsen. Unless the Office can identify specific teachings in the cited references that teach or suggest the presently claimed invention, Applicant respectfully requests that the present rejection be reconsidered and withdrawn.

Claims 10 and 11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Olsen in view of Balzar, US 5,827,256 ("Balzar"). Applicant respectfully traverses this rejection.

The present invention is generally described above. Claims 10 and 11 relate to further refinements of the invention. They relate to limitations on the absorbent material, either compressed or formed into a pledget.

Balzar purports to disclose a tampon having a protective finger sheath for its insertion. The tampon is formed from a rolled up absorbent that is compressed into an absorbent pledget.

Appl. No. 09/823,045

The Office Action allows that Olsen fails to teach a compressed absorbent fibrous core; however, it indicates Balzar supplies this teaching. The Office suggests that it would have been obvious to use the compressed absorbent pledget of Balzar in the device of Olsen to provide a more compact absorbent tampon.

Applicant respectfully submits that the suggested combination fails to teach or suggest the presently claimed invention. The failure of Olsen to teach the invention of Claim 1, from which Claims 7-9 depend, is described in detail, above. Applicant does not believe that Balzar adds anything to the teaching of Olsen. Unless the Office can identify specific teachings in the cited references that teach or suggest the presently claimed invention, Applicant respectfully requests that the present rejection be reconsidered and withdrawn.

Claims 12 and 13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Olsen in view of Schaefer, US 3,815,601 ("Schaefer"). Applicant respectfully traverses this rejection.

The present invention is generally described above. Claims 12 and 13 relate to further refinements of the invention. They relate to limitations on the absorbent material, either a plurality of compressed tablets or foam.

Schaefer purports to disclose a tampon comprising a resilient absorbent foam aggregate encased in an overwrap.

The Office Action allows that Olsen fails to teach using compressed absorbent tablets or foam; however, it indicates Schaefer supplies this teaching. The Office suggests that it would have been obvious to use the resilient foam aggregate of Schaefer in the device of Olsen in order to increase the absorption capacity, containment, and rates of the tampon.

Applicant respectfully submits that the suggested combination fails to teach or suggest the presently claimed invention. The failure of Olsen to teach the invention of Claim 1, from which Claims 12 and 13 depend, is described in detail, above. Applicant does not believe that Schaefer adds anything to the teaching of Olsen. Further, Applicant does not see an explicit teaching in Schaefer of compressed, absorbent tablets or the use of foam in a tampon with an overwrap having a lower portion that is liquid impermeable. Unless the Office can identify specific teachings in the cited references that teach or suggest the presently claimed invention, Applicant respectfully requests that the present rejection be reconsidered and withdrawn.

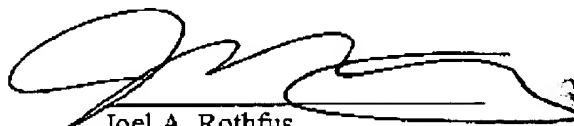
Appl. No. 09/823,045

Allowable Subject Matter:

Office Action states that Claims 18-20 and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant thanks the Examiner for this indication, but declines to amend the claims at the present time, as he believes all claims are in condition for allowance.

Applicant respectfully requests a timely Notice of Allowance in this case.

Respectfully submitted,



Joel A. Rothfus
Reg. No. 33,277
Attorney for Applicant

RECEIVED
CENTRAL FAX CENTER
SEP 3 1 2003

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003
(732) 524-2722
September 3, 2003

OFFICIAL